

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

07 CV

556

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS
Lucas, StevenDEFENDANTS
Abercrombie & Fitch Co.,
Abercrombie & Fitch Stores, Co.,
Abercrombie & Fitch Trading Co.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Woodley & McGilivray
1125 15th Street, NW Suite 400
Washington, DC 20005
202-833-8855

ATTORNEYS (IF KNOWN)

James Patrick Clark
Bond, Schoenack & King, PLLC
1399 Franklin Avenue, Ste. 200
Garden City, NY 11530

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

This is an action under the Fair Labor Standards Act and N.Y. Lab. Law Sections 662 and 215 arising from defendants discharge of plaintiff for asserting his right to overtime pay.

Has this or a similar case been previously filed in SDNY at any time? No ☐ Yes? ☒ Judge Previously Assigned P. Kevin Castel

If yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☒ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	[810 AGRICULTURE	[422 APPEAL	[400 STATE	OTHER STATUTES	OTHER STATUTES
	[310 AIRPLANE	[362 PERSONAL INJURY -	[820 FOOD & DRUG	28 USC 158	REAPPORTIONMENT		
	[315 AIRPLANE PRODUCT	MED MALPRACTICE	[825 DRUG RELATED	[423 WITHDRAWAL	[410 ANTITRUST		
	LIABILITY	PERSONAL INJURY	SEIZURE OF	28 USC 157	[430 BANKS & BANKING		
	[320 ASSAULT, LIBEL &	PRODUCT LIABILITY	PROPERTY	21 USC 881	[450 COMMERCE/ICC		
	SLANDER	[368 ASBESTOS PERSONAL	[830 LIQUOR LAWS	PROPERTY RIGHTS	RATES/ETC		
	[330 FEDERAL	INJURY PRODUCT	[840 RR & TRUCK	[820 COPYRIGHTS	[460 DEPORTATION		
	EMPLOYERS'	LIABILITY	[850 AIRLINE REGS	[830 PATENT	[470 RACKETEER INFLU-		
	LIABILITY	PERSONAL PROPERTY	[860 OCCUPATIONAL	[840 TRADEMARK	ENCED & CORRUPT		
	[340 MARINE	[370 OTHER FRAUD	[890 OTHER		ORGANIZATION ACT		
REAL PROPERTY	[345 MARINE PRODUCT	[371 TRUTH IN LENDING		SOCIAL SECURITY	(RICO)	OTHER STATUTES	OTHER STATUTES
	LIABILITY	[380 OTHER PERSONAL	LABOR	[861 MIA (1395FF)	[480 CONSUMER CREDIT		
	[350 MOTOR VEHICLE	PROPERTY DAMAGE	[710 FAIR LABOR	[862 BLACK LUNG (923)	[490 CABLE/SATELLITE TV		
	[355 MOTOR VEHICLE	PRODUCT LIABILITY	[720 LABOR/MGMT	[863 DIWC (405(g))	[810 SELECTIVE SERVICE		
	INJURY	[385 PROPERTY DAMAGE	RELATIONS	[863 DIWW (405(g))	[850 SECURITIES/		
		PRODUCT LIABILITY	[730 LABOR/MGMT	[864 SSID TITLE XVI	COMMODITIES/		
			REPORTING &	[865 RSI (405(g))	EXCHANGE		
			DISCLOSURE ACT		[875 CUSTOMER		
			[740 RAILWAY LABOR ACT	FEDERAL TAX SUITS	CHALLENGE		
			[790 OTHER LABOR	[870 TAXES	12 USC 3410		
ACTIONS UNDER STATUTES			LITIGATION	[871 IRS-THIRD PARTY	[891 AGRICULTURE ACTS	OTHER STATUTES	OTHER STATUTES
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	[791 EMPL RET INC	20 USC 7809	[892 ECONOMIC		
	[441 VOTING	[510 MOTIONS TO	SECURITY ACT		STABILIZATION ACT		
	[442 EMPLOYMENT	VACATE SENTENCE			[893 ENVIRONMENTAL		
	[443 HOUSING	28 USC 2255			MATTERS		
	ACCOMMODATIONS	[530 HABEAS CORPUS			[894 ENERGY		
	[444 WELFARE	[535 DEATH PENALTY			ALLOCATION ACT		
	[445 AMERICANS WITH	[540 MANDAMUS & OTHER			[895 FREEDOM OF		
	DISABILITIES -	[550 CIVIL RIGHTS			INFORMATION ACT		
	EMPLOYMENT	[555 PRISON CONDITION			[900 APPEAL OF FEE		
	[446 AMERICANS WITH				DETERMINATION		
ACTIONS UNDER STATUTES					UNDER EQUAL ACCESS	OTHER STATUTES	OTHER STATUTES
REAL PROPERTY	[440 OTHER CIVIL RIGHTS				TO JUSTICE		
					[950 CONSTITUTIONALITY		
					OF STATE STATUTES		
					[890 OTHER STATUTORY		
					ACTIONS		

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ Unknown OTHER JUDGE P. Kevin Castel DOCKET NUMBER 1:06-cv-12879

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

☒ 1 Original Proceeding☐ 2a. Removed from State Court
☐ 2b. Removed from State Court
AND at least one party is a pro se litigant☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from (Specify District)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judge Judgment

ORIGIN

(PLACE AN x IN ONE BOX ONLY)

☐ 1 U.S. PLAINTIFF☐ 2 U.S. DEFENDANT☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)☐ 4 DIVERSITY

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[]	[]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[]	[]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[]	[]
CITIZEN OF ANOTHER STATE	[]	[]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[]	[]	FOREIGN NATION	[]	[]

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Steven Lucas
96-36 220th Street
Queens Village, NY 11428
Queens County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Bond, Schoenack & King, PLLC
On Behalf of Abercrombie & Fitch Co., Abercrombie & Fitch Trading Co.,
and Abercrombie & Fitch Stores
1399 Franklin Avenue, Ste. 200
Garden City, NY 11530
Nassau County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE 1/23/07 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

RECEIPT #

YES (DATE ADMITTED Mo. 03 Yr. 05)
Attorney Bar Code # LS8260

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

556

LUCAS, STEVEN)

Individually, and on behalf of all others)
Similarly situated as Class Representatives,)

PLAINTIFF,)

v.)

ABERCROMBIE & FITCH, CO.)
ABERCROMBIE & FITCH STORES, INC.)
ABERCROMBIE & FITCH TRADING, CO.)
d/b/a Abercrombie & Fitch)

DEFENDANTS.)

Civil Action No.
Jury Trial Requested

NOTICE OF RELATED CASE

This action is related to the case Green, et al. v. Abercrombie & Fitch, Co., et al., civil action number 1:06-cv-12879, which is pending before the Honorable P. Kevin Castel. This is a case concerning defendants' retaliation against the plaintiff for his complaints about not receiving overtime pay and his participation and assistance in the Green case. The Green case concerns defendants' failure to pay overtime for overtime hours worked in violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207(a) and the New York Minimum Wage Act, N.Y. Lab. Law §§ 650, et seq. Thus, the two cases are related in that an individual was retaliated against – i.e., he was fired from his job with defendants – as a result of the Green case having been pursued.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LUCAS, STEVEN

Individually, and on behalf of all others
Similarly situated as Class Representatives,

PLAINTIFF,

v.

**ABERCROMBIE & FITCH, CO.
ABERCROMBIE & FITCH STORES, INC.
ABERCROMBIE & FITCH TRADING, CO.
d/b/a Abercrombie & Fitch**

DEFENDANTS.

**Civil Action No.
Jury Trial Requested**

COMPLAINT

INTRODUCTION

1. Plaintiff Steven Lucas is a former loss prevention agent employed by Defendants. Plaintiff regularly worked for Defendants over forty (40) hours per week without receiving overtime compensation for such hours worked. Plaintiff, by and through his attorneys, Woodley & McGillivray, complains of Defendants Abercrombie & Fitch, Co., Abercrombie & Fitch Stores, Inc., and Abercrombie & Fitch Trading, Co., d/b/a Abercrombie & Fitch (hereinafter referred to as "Defendants") as follows:

NATURE OF THE ACTION

2. Plaintiff alleges that he is entitled to back pay, liquidated damages, punitive damages, reinstatement, make-whole relief, prejudgment interest, costs and reasonable attorneys' fees from Defendants due to Defendants' retaliatory discharge of his employment for engaging in protected activity in violation of 29 U.S.C. Section 215

(a)(3) and N.Y. Lab. Law §§ 662 and 215.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337 and 29 U.S.C. § 216(b). Plaintiffs' claim under 29 U.S.C. 215 (a)(3), the Fair Labor Standards Act, confers subject matter jurisdiction.

4. In addition, the Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. Both the New York Labor Law claim and Fair Labor Standards Act claim involve violations of similar anti-retaliation statutes. Claims similar to the New York Labor Law claim have been litigated frequently and allege violations similar to those set forth in this action. Moreover, the New York Labor Law claim does not predominate over the Fair Labor Standards Act claim.

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391. Defendants regularly transact business in this district, such that they are subject to personal jurisdiction here.

6. Defendants are engaged in interstate commerce.

7. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

8. Plaintiff Steven Lucas is an adult individual residing in Queens Village, Queens County, New York.

9. Upon information and belief Defendant Abercrombie & Fitch, Co. is a domestic corporation doing business within the City and County of New York. Abercrombie & Fitch, Co. maintains corporate headquarters in Columbus, OH at 6301

Fitch Path, New Albany, OH 43054.

10. Upon information and belief Defendant Abercrombie & Fitch Stores, Inc. is a domestic corporation doing business within the City and County of New York. Abercrombie & Fitch Stores, Inc. maintains corporate headquarters in Columbus, OH at 6301 Fitch Path, New Albany, OH 43054.

11. Upon information and belief Defendant Abercrombie & Fitch Trading, Co. is a domestic corporation doing business within the City and County of New York. Abercrombie & Fitch Trading, Co. maintains corporate headquarters in Columbus, OH at 6301 Fitch Path, New Albany, OH 43054.

12. Upon information and belief Defendants are specialty retailers of apparel for men, women and children, and maintain approximately 897 stores located throughout New York and across the United States, within the following divisions: Abercrombie & Fitch, abercrombie, Hollister and Ruehl.

STATEMENT OF FACTS

13. Plaintiff was initially hired and employed as a loss prevention agent by Defendants.

14. Plaintiff's work was performed on the premises of the Defendants' Abercrombie & Fitch stores, was performed in the normal course of the Defendants' stores' business and was integrated into the business of the Defendants' stores.

15. At all relevant times, the job of Plaintiff has been to perform security related functions on behalf of Defendants at Defendants' stores.

16. Defendants learned that Plaintiff had contacted counsel concerning Defendants' violation of federal and state labor laws. In retaliation for said contact and

in retaliation for the filing of a Complaint against Defendants, which alleges FLSA and New York State Minimum Wage Act violations, Defendants fired Plaintiff on January 18, 2007 in violation of the FLSA, 29 U.S.C. §215(a)(3), N.Y. Lab. Law § 215 and 662.

17. At all relevant times, Plaintiff was regularly scheduled to work up to forty (40) hours per week.

18. Plaintiff regularly worked in excess of forty (40) hours per week yet the Defendants willfully failed to pay Plaintiff overtime pay of one and one-half times his regular hourly rate for all hours worked in excess of forty (40) hours per week, in violation of the Fair Labor Standards Act and the New York Minimum Wage Act.

19. Plaintiff Steven Lucas was employed by the Defendants in the position of loss prevention agent within the past three years.

**FIRST CLAIM FOR RELIEF
RETALIATION**

20. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 19 above.

21. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). Plaintiff's written consent is attached hereto and incorporated by reference.

22. At all times relevant to this action, Plaintiff was employed by the Defendants within the meaning of the FLSA.

23. At all times relevant to this action, Plaintiff was engaged in commerce and/or the production of goods for commerce and/or Defendants were enterprises engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §206(a) and 207(a).

24. Through information provided to counsel, Plaintiff caused to be instituted an action against Defendants for violations of the FLSA and New York State Minimum Wage Act, Green, et al. v. Abercrombie & Fitch, et al., 1:06-cv-12879 (S.D.N.Y.) (PKC), which was filed in November 2006.

25. On or about October 2006, Defendants informed Plaintiff that they knew Plaintiff had been in contact with counsel for the purpose of bringing a lawsuit to obtain unpaid overtime wages. Defendants warned Plaintiff against participation in such a lawsuit.

26. After learning of Plaintiffs' communications with counsel and the filing of the Complaint in Green, et al. v. Abercrombie & Fitch, et al., 1:06-cv-12879 (S.D.N.Y.) (PKC), Defendants, and/or their employees or representatives unlawfully terminated the employment of Plaintiff on January 18, 2007, in retaliation for asserting his rights under federal and state law and in violation of the FLSA, 29 U.S.C. §215(a)(3), N.Y. Lab. Law § 215 and 662.

27. Defendants' actions were willful and in direct violation of federal and state law.

28. Due to Defendants' violation of federal and state anti-retaliation labor law provisions, Plaintiff is entitled to recover from Defendants, jointly and severally, his back pay, liquidated damages, punitive damages, attorneys' fees and costs pursuant to the FLSA and the New York State Labor Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

29. Declare the Defendants' conduct complained of herein to be in violation of the Plaintiff's rights under the FLSA and the New York Labor Law;

30. Award Plaintiff back pay and liquidated damages due to Defendants' retaliatory actions;

31. Award Plaintiff punitive damages due to Defendants' retaliatory conduct;

32. Reinstatement Plaintiff in his job as loss prevention agent and make him whole for the loss of all benefits, backpay and other relief necessary to remedy Defendants' unlawful retaliation against him;

33. Award Plaintiff prejudgment interest; and

34. Award Plaintiffs the costs of this action together with reasonable attorneys' fees; and such other legal and equitable relief as this Court deems necessary and proper.

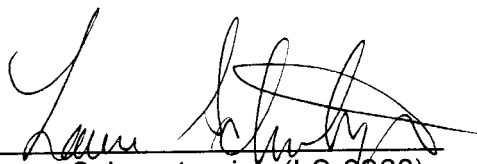
DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

Dated: January 23, 2007

New York, NY

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren Schwartzreich", written over a horizontal line.

Lauren Schwartzreich (LS-8260)
Gregory K. McGillivray (SSN: 0280)
WOODLEY & MCGILLIVRAY
1125 15th Street, N.W.
Suite 400
Washington, DC 20005
Phone: (202) 833-8855

ATTORNEYS FOR THE PLAINTIFFS

CONSENT TO SUE

I hereby consent to sue my current/former employer Abercrombie & Fitch, for violations of the Fair Labor Standards Act and the New York State Minimum Wage Act.

Steven Lucas

PRINTED NAME

Steven Lucas

SIGNATURE